

CHAPTER 31 – PROTECTION OF WORK / RESPONSIBILITY FOR DAMAGES

PLEASE NOTE: This Chapter is divided into two (2) parts.

1. Sections 31-1 and 31-2 apply to all Projects bid before November 12, 2009.
2. Section 31.3 applies to all Projects bid on or after November 12, 2009.

31-1 GENERAL RESPONSIBILITIES

Subsection 00150.75 states that the Contractor is responsible to protect and maintain all Work required by the Contract, until the Work is completed and accepted, unless that responsibility is specifically relieved by another part of the Contract.

Subsection 00170.80(c) provides that, upon written request of the Contractor and written approval of the Project Manager (PM), the Agency may relieve the Contractor of responsibility for damage by Public Traffic on certain completed portions of the Work. The PM must provide this relief in writing. The PM may grant temporary, partial, or conditional relief as specified in 00170.80(c)(1).

As specified in 00170.80(d), if damages due to vandalism exceed \$5,000 per occurrence, the Agency may reimburse the Contractor for actual damages if they have provided reasonable protection of the Work.

Under certain conditions, as discussed in Subsection 00220.60, the Agency is responsible for maintaining the Roadway for Public Traffic. Although the Agency has the authority to perform Work that is the responsibility of the Contractor, the PM must use that authority carefully. The PM should give the Contractor the opportunity to perform the Work. The Agency forces, or forces other than those of the Contractor, should generally not perform Contract Work unless an emergency exists.

Also refer to the warranties in [Chapter 41 - Warranties, Guarantees, Responsibility for Materials and Workmanship](#).

31-2 REPAIR OF DAMAGE FROM PUBLIC TRAFFIC

When the motoring public has an accident within a construction Project, the Contract Work is sometimes damaged. Unless emergency repairs or cleanup need to be performed by public forces, the PM should have the Contractor perform all needed repairs to the Contract Work.

Generally, the Work can be classified in one of the two following scenarios. Contact the Contract Administration Engineer (CAE) if you need further assistance.

(a). IF the Agency has not accepted responsibility for the Work under 00170.80(c): Under this scenario the Contractor is responsible for all costs associated with repairing the Work.

The PM will:

- Have the Contractor repair the damage to the Contract Work.
- Hold the Contractor responsible for the cost of the repairs to the Contract Work. These costs are not the responsibility of the Agency. However, as with any dispute the Contractor may file a claim in an attempt to recover these costs. [*Refer to [Chapter 27 – Disagreements, Disputes, and Claims](#)*]
- If Maintenance or other Agency forces had to perform emergency repairs or cleanup, the costs must be tracked and back-charged to the Contractor. When public forces perform repairs to the Contract Work, the PM must prepare a [State Force Order, form 734-1105](#) (SFO) so that the public forces can charge emergency repair costs to the Project. Contact the Contract Administration Unit (CAU) who will work with the Transportation Program Office's Program and Funding Services Section to establish a subjob for this specific Work. Ensure the District Manager has the SFO, expenditure account and subjob to charge all the associated costs of the Work performed by Maintenance or other Agency forces.

Once the repair work is completed, the PM must determine the total Agency charges made against the subjob. Prepare a Contract Change Order (CCO) to deduct these Agency charges for the Work from the next progress payment to the Contractor. The use of a CCO will provide the Contractor with a breakdown of the Work and costs involved in the repair Work performed by the Agency.

The Contractor may attempt to recover the costs from the third-party responsible for the damage, if the party is known. The Transportation Program Office's, Budget & Maintenance Section may be able to provide assistance in obtaining police report information, if it is available.

(b). IF the Agency has accepted responsibility under 00170.80(c). Under this scenario the Project will fund all associated costs.

The PM will:

- Track all emergency repairs or cleanup costs so they can be paid by Project funding. Contact the CAU, who will work with the Transportation Program Office's Program and Funding Services Section, to establish a subjob for this specific Work.
- The PM will need to determine who the responsible party is that caused the damages. This information can be obtained from police reports, ODOT dispatch or from witnesses at the scene.

- If public forces will perform repairs to the Contract Work, the PM must prepare a [State Force Order, form 734-1105](#) so that the public forces can charge emergency repair costs to the Project. Establish the cost of incidental cleanup from the accident with the District Manager. All Agency charges for such repairs must be charged against the subjob that was established for this specific Work.
- When the PM directs the Contractor to repair damage from the accident, the PM will pay for the work under the appropriate bid item or through an appropriate Contract Change Order (CCO) or Extra Work Order (EWO). Costs will be charged to the Project, specifically against the subjob that was established for this specific Work.

Note: *At no time should the PM, Contractor, or any other Agency employee issue an estimate of repair costs to the party responsible for causing the damage, or their insurance company. All requests for this type of information should be forwarded to the Claims Against Others (CAO) Coordinator.*

The PM will need to fill out an [Investigation and Report of Damage to Highway Structure form 734-3373](#). The form is available on the following ODOT Intranet Website: <http://transnet.odot.state.or.us/cs/forms/ODOT/3373.pdf>. Submit the completed form along with any accident photos and police reports to the CAO Coordinator. Any questions regarding this process should be directed to the CAO Coordinator at (503) 986-3040.

- Notify the ODOT Transportation Program Office's Budget & Maintenance Section when the repair Work is complete. This Section will work with the PM and others to obtain the necessary documentation in order to recover the costs from the responsible third-party.

31-3 RESPONSIBILITY FOR DAMAGE TO WORK CAUSED BY PUBLIC TRAFFIC

NOTE: *This Section addresses the modifications to Subsection 00170.80 which covers the requirements for responsibility for damage to Work caused by Public Traffic and applies to all Projects Bid on or after November 12, 2009 (See SP 00170.80).*

On Projects using the November 12, 2009 00170.80 Specifications, the Contractor is responsible for all Work, Equipment and Materials, and for repairing all damages caused by Public Traffic to the Work performed until the entire Project has been completed and accepted by the Agency, **unless** the Agency has accepted responsibility for a portion of the completed Work.

If completed portions of Work meet all of the following conditions, the Contractor may apply for relief of responsibility for damage caused by Public Traffic:

- The completed portions of Work are completed according to CCO's, the Contract Plans or approved stage construction Plans (if included in the Contract).
- The traffic control complies with approved Traffic Control Plan.

- All required Materials conformance and quality compliance documents related to the completed Work are on file with the PM.

The Agency can only consider and assume responsibility for the following portions of Work:

- A segment of Roadway, drainage facilities, Slopes, lighting, traffic control devices and access facilities.
- A Bridge or other Structure within a segment of Roadway.
- Traffic signals and appurtenances at an intersection [*only after signals are turned-on and operating according to 00990.70(h)*].
- Permanent, passive traffic control devices.
- Complete circuits of a highway lighting system (*only after completion of the 14 day burn test according to 00970.70*).
- Portions of a building open to public use.

(a) Contractor’s Request for Relief of Responsibility, form 734-2768

To apply for relief, the Contractor must submit a signed [Contractor’s Request for Relief of Responsibility, form 734-2768](#) to the PM. The Contractor will complete Boxes #1 – #11, and #15 - #17. The Request for Relief of Responsibility form will describe the specific Work for which the relief is being requested.

- **Boxes # 1 - #7** – These boxes contain the specific Project information.
- **Box #8 - Bid Item Number** - This will be the bid item(s) related to the completed portion(s) of Work.
EXAMPLE: If the Contractor is asking for relief of Work related to guardrail installation, multiple bid items covering the guardrail, posts and blocks, transitions, end pieces, etc., would be listed in this box. If the relief is being requested for installed delineators, then there would only be one bid item listed.
- **Box #9 – Unit** – This will be the pay unit for the applicable bid item(s):
 - **Lump Sum:** If the bid item pay unit is “lump sum”, then 100% of the bid item must be completed before relief can be requested.
 - **Each:** If the bid item pay unit is “each”, then the unit must be 100% complete before it can be included in the request. For example, if a manhole bid item has a pay unit of “each”, then 100% of the manhole bid item work must be completed. No percentage can be withheld for missing documentation or incomplete Work.
 - **Foot:** If the bid item pay unit is “foot”, then each foot of completed Work may be included in the request for relief. For example: A bid item quantity of Guardrail, Type 2 is 2500 ft. Typically a full run of guardrail would be completed before the request for relief would be granted. However, in

some instances where the run is extremely long, the Contractor could request, and the PM could grant, relief of responsibility for smaller segments of installed guardrail **if** the installation of that segment is complete and meets all the requirements of 00170.80(c).

- **SQFT:** If the bid item pay unit is sqft, then the entire unit being measured must be complete. For example, if the bid item is Type “G” Signs in Place, and the pay unit is sqft, then each sign installation must be 100% complete before the item is included in the relief request.
- **Combined:** If relief is being requested for a Bridge or Structure, or a segment of Roadway which contains multiple bid items and multiple pay units, enter “combined.”
- **Box #10 – Percent or Quantity Completed** – Enter the percent complete for the applicable Work (this must be 100% if the pay unit is “lump sum”), or the quantity of work completed (each, foot, etc.).
- **Box #11 – Description of bid item or portion of Work** – This section will describe the Work for which the Contractor is requesting relief. A detailed scope of Work, including the beginning and ending milepoints or stations, plan sheet and note numbers, etc. needs to be included to clearly identify the limits of the Work.
- **Box #15 - #17** – These boxes will contain the Contractor’s representatives’ printed name, signature, title, date the request form is signed, and the date and method of submittal to the PM.

Within seven Calendar Days after the PM receives the Contractor’s Request for Relief of Responsibility form, the PM will complete Boxes #12 - #14 and #18 – #23:

- **Box #12 – #13 – “Approved” or “Denied”** - The PM must review each item of Work for which the Contractor is requesting relief, and indicate whether the item is “Approved” or “Denied”. There may be instances where some of the Work items are approved, and other items are denied.
- **Box #14 – Reason for Denial** - For any Work items that are denied, the specific reason for denial must be included. Be specific so the Contractor can tell what correction(s) are required before relief of responsibility needs can be granted for the Work.
- **Box #18 – Date Request Received** - Enter the date the Contractor’s Request for Relief of Responsibility, form 734-2768 is received in the PM office.
- **Box #19 – Request Reviewed By** - Enter the name of the PM or PM staff member responsible for reviewing the request.
- **Box #20 – Project Manager Signature** – The PM will sign the form in this box.
- **Box #21 – Date** – This will be the date the form is signed by the PM.

- The Contractor on an Extra Work basis,
 - Agency forces, or
 - By other means as determined by the PM.
1. **If the damage occurs before Final Inspection** and the PM requests the Contractor to repair the damage, the Contractor will complete the Work on a Force Account basis according to Section 00197. All costs associated with the repairs will be totaled, and the Contractor will be reimbursed 75% of the total costs.
 2. **If the damage occurs after Final Inspection** and the PM requests the Contractor to repair the damage, the Contractor will complete the repair Work on a Force Account basis according to 00197. All costs associated with the repairs will be totaled and the Contractor will be reimbursed 100% of the total costs.

(c) Contractor’s Responsibility on Work for Which Agency has Assumed Responsibility for Damage

If the Contractor needs to perform any additional Work on a portion of completed Work for which the Agency has already accepted responsibility, the Work must be performed under an approved stage construction Plan or approved Traffic Control Plan. If the Contractor performs any Work outside of the approved Plan, and the Work is damaged by Public Traffic, then the Contractor will become fully responsible and liable to make all repairs with no reimbursement by the Agency.

EXAMPLE: The Agency has assumed responsibility for a segment of Roadway (segment “A”). NB traffic is diverted onto segment “A” while the Bridge is being replaced. After the Bridge Work is completed, the NB traffic is diverted onto the new Bridge and segment “A” must be re-striped to accommodate the new traffic pattern. The Contractor has submitted both stage construction Plans and a Traffic Control Plan for this work, which the Agency has accepted.

When the striping work is performed, the Contractor does not set up the traffic control on segment “A” according to the approved Traffic Control Plan. While performing the striping work, an accident occurs and a portion of guardrail on segment “A” is damaged by Public Traffic.

Under this scenario, since the Contractor’s traffic control was not performed according to the approved Traffic Control Plan, the Contractor is responsible for repairing the damage and bears all the costs to do so. The Agency’s responsibility for damage on this segment of Roadway is basically voided due to the non-compliance with the Traffic Control Plan.